

Before the
Federal Communications Commission
Washington, D.C. 20554

2000 NOV 30 P 3:47

In the Matter of

Amendment of Section 73.622(b),
Table of Allotments,
Digital Television Broadcast Stations.
(Charlottesville, Virginia)

MM Docket No. 00-240
RM-9793

NOTICE OF PROPOSED RULE MAKING

Adopted: November 27, 2000

Released: November 28, 2000

Comment Date: January 19, 2001

Reply Comment Date: February 5, 2001

By the Chief, Video Services Division:

1. The Commission has before it a petition for rule making filed by Central Virginia Educational Telecommunications Corporation ("CVETC"), licensee of noncommercial educational station WHTJ(TV), NTSC Channel *41, Charlottesville, Virginia. CVETC requests the substitution of DTV Channel *46 for station WHTJ(TV)'s assigned DTV Channel *14.

2. CVETC states that the proposed change will obviate the possibility of WHTJ interfering with public safety and commercial land-mobile operations which operate on frequencies located adjacent to UHF-TV channel 14. Without a channel substitution, CVETC estimates that it may have to spend \$500,00 to \$1,000,000 to construct and operate on Channel 14 without causing interference to land-mobile and aural STL's licensees. Thus, CVETC asserts, the proposed channel change will enable it to bring a new digital non-commercial television service to Charlottesville without inviting unnecessary interference problems and the associated expenses involved in mitigating these potential problems.

3. Shenandoah Valley Educational Television Corporation ("Shenandoah"), licensee of television translator station W19BB, Charlottesville, Virginia, filed comments regarding CVETC's rule making petition. In its comments, Shenandoah supports CVETC's proposal to substitute DTV Channel *46 for Station WHTJ(TV). However, it requests that the Commission retain DTV Channel *14 as an unassigned, reserved channel at Charlottesville so that it may apply for it to upgrade its translator service to full-power status. In this regard, Shenandoah notes that its translator operation on Channel 19 at Charlottesville was displaced. See Achernar Broadcasting Company ("Achernar") 15 FCC Rcd 7808 (2000). It asserts that as a result of that displacement, the Commission stated that "to avoid disruption of its current translator service on channel 19,

Shenandoah may wish to submit a displacement application for channel 14 [at Charlottesville] to be processed by the Mass Media Bureau in accordance with its usual procedures." *Id.* at 7818. Shenandoah states that it not only wishes to pursue the Commission's suggestion, but also wishes to upgrade its translator operation to a full-power.¹ In the meantime, Shenandoah states, it will also apply for a displacement channel for its translator to maintain its current analog service to Charlottesville.

4. CVETC contends that Shenandoah's comments are procedurally defective and should be dismissed without consideration.² However, to the extent the Commission were to consider Shenandoah's proposal, CVETC maintains that such consideration is appropriate only in a separate rule making proceeding. CVETC states that its proposal is for a DTV channel substitution that is fully compliant with the Commission's DTV rules and can be processed expeditiously. CVETC also states that expedited processing of its rule making petition is consistent with the Commission's directive to review its proposed move to channel 46 which would make channel 14 available to Shenandoah for secondary television service in Charlottesville. *Achernar*, 15 FCC Rcd at 7818.³ CVETC contends, however, that if the Commission were to consider Shenandoah's proposal as part of this proceeding, it would suffer needless delay and expense while inevitable counterproposals and interference issues affecting land mobile licensees were considered.⁴

5. **Discussion** We will not incorporate Shenandoah's proposal into this proceeding as it

¹ Shenandoah states it is convinced that by an appropriate design of a DTV facilities for DTV Channel *14 at Charlottesville, it could avoid problems of land mobile and second harmonic effects that have led CVETC to propose the subject rule making.

² CVETC states that Section 1.405 of the Commission's Rules prohibits the filing of comments on petitions to amend the Television Table of Assignments.

³ CVETC also notes that while the Commission suggested that channel 14 might be available as a displacement channel for Shenandoah's translator service on channel 19, it would be on a secondary television service basis, not as a full-service facility. It maintains that this proceeding should be conducted "consistent with this premise."

⁴ In a "reply" pleading, Shenandoah states that inasmuch as CVETC's petition proposes the deletion of DTV Channel *14 at Charlottesville, and it proposes the retention of that channel there, it would be efficient to solicit public comment on the two proposals. It suggests that it makes no sense to conduct one proceeding to "delist" the channel only to launch a new and separate proceeding to "reverse that delisting decision." Shenandoah states that if any of CVETC's concerns regarding delay were to materialize, and the Commission were to conclude that assigning DTV Channel *46 to WHTJ(TV) is desirable, the Commission could first allot DTV Channel *46 to Charlottesville, assign it to CVETC, and leave "for a later stage of the proceeding" the decision of whether it is appropriate to delist DTV Channel *14. Shenandoah also states that any land mobile issues are speculative, but that concerns raised could also be addressed by bifurcating the proceeding if and when substantial delay develops. Finally, Shenandoah rejects what it terms CVETC's characterization of the Commission's "directive" in *Achernar*. In this regard, it states that CVETC fails to acknowledge that the Commission directed expeditious consideration of its petition because of the "unfortunate plight" thrust upon Shenandoah by the displacement of its translator service on Channel 19. In any event, it maintains that its decision to seek full-power status for DTV Channel *14 is "simply the logical extension" of the Commission's observations in *Achernar* and, if anything, "strengthens the case for a single expedited proceeding."

requests. CVETC correctly notes that Section 1.405 of the Commission's rules does not contemplate the filing of responses to petitions for rule making of the Television Table of Allotments. On that basis alone, Shenandoah's pleadings are subject to dismissal. However, we also conclude that the fundamental premise of Shenandoah's proposal - that as a displaced translator licensee it is entitled to employ CVETC's channel substitution proceeding to initiate a full-service new DTV allotment proceeding in Charlottesville - is simply incorrect. The only support proffered by Shenandoah in this regard is the Commission's observation in Achernar that if CVETC's petition to substitute DTV Channel *46 for WHTJ(TV)'s assigned DTV Channel *14, the latter channel would then be available *for secondary use* for which Shenandoah could then file a displacement application to avoid disruption of its current translator service. Shenandoah's current proposal is not contemplated by that language in Achernar.

6. Furthermore, rather than awaiting the outcome of CVETC's rule making petition to modify its initial DTV assignment and then filing a displacement application for DTV Channel *14 at Charlottesville for its translator service, Shenandoah seeks to enlarge upon that suggested procedure by (1) seeking another channel in the Charlottesville area for use for its displaced translator service, while at the same time (2) pursuing the assignment of DTV channel *14 in Charlottesville for a full-service station for which it would later apply. This exceeds the Commission's observation in Achernar, that Shenandoah might be able to use DTV channel *14 on a secondary basis for its displaced translator service if the CVETC petition is *first* granted and DTV Channel *46 is assigned to WHTJ(TV). In such a case, Shenandoah would then be free to file a displacement application for its current translator service proposing the use of DTV channel *14 on a secondary basis premised on a technical showing that no interference would be caused to other full-service and translator stations pursuant to the technical rules governing low power television stations.

7. Aside from its misplaced reliance on Achernar, we further conclude that Shenandoah's proposal would undermine our procedures for modification of initial assignments in the DTV Table of Allotments. In this regard, we reject the contention that it makes "no sense" to treat the two proposals on separate tracks. In that regard, the two proposals, and the technical requirements of each, are materially different. Initial DTV allotments were based on replication of the service area of the affected NTSC facility. Proposals, like CVETC's, to modify a station's initial DTV assignment must demonstrate compliance with the technical requirements based on replication of service set forth in Section 73.623(c). If technical compliance is achieved, the new channel is *substituted* for the assigned channel - a new channel is not *added* to the Table of Allotments. Petitions for rule making to *add* channels to the DTV Table of Allotments, like Shenandoah's, must demonstrate compliance with the minimum geographic spacing and interference protections (including to land mobile licensees) requirements for DTV allotments set forth in Section 73.623(d). Thus, Shenandoah's proposal to essentially add a new DTV Channel for Charlottesville is not appropriate for consideration in the instant proceeding, but rather in a separate rule making proceeding if technically feasible. Moreover, there is no basis to indicate that efficiency would be achieved or the public interest served by ignoring our well-established procedures for allotment rule makings. Similarly, it is not in the public interest to delay consideration of CVETC's rule making

for modification of its initial DTV assignment in order to allow Shenandoah to find a displacement channel or to have a new full service DTV channel assigned to Charlottesville.

8. Our conclusions herein do not in any way preclude Shenandoah from filing a displacement application for its current translator service for any appropriate channel on a secondary basis. However, to the extent that Shenandoah wishes to pursue, on a separate track, both its displace translator operations and the assignment of an additional full-service DTV channel at Charlottesville, it must file both a displacement application and a separate rule making petition with an engineering statement demonstrating compliance with Section 73.653(d) of the Commission's rules.

9. In view of the above, we believe CVETC's proposal warrants consideration. DTV Channel *46 can be substituted for DTV Channel *14 at Charlottesville, Virginia, as proposed, in compliance with the principle community coverage requirements of Section 73.625(a) at coordinates (37-58-58 N. and 78-29-00 W.). In addition, we find that this channel change is acceptable under the 2 percent criterion for de minimis impact that is applied in evaluating requests for modification of initial DTV allotments under Section 73.623(c)(2). We propose to substitute DTV Channel *46 for DTV Channel *14 for station WHTJ(TV) at Charlottesville with the following specifications:

State & City	DTV Channel	DTV power (kW)	Antenna HAAT (m)
VA Charlottesville	*46	50	352

10. Accordingly, we seek comments on the proposed amendment of the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Charlottesville, Virginia	*14, 32	32, *46

11. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

12. Interested parties may file comments on or before January 19, 2001, and reply comments on or before February 5, 2001, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the

petitioner, or its counsel or consultant, as follows:

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Washington, DC 20006
(Counsel for Central Virginia Educational Telecommunications Corporation)

13. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, Section 73.606(b) and 73.622(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981. The Regulatory Flexibility Act of 1980 would also not apply to rule making proceedings to amend the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules.

14. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202) 418-1600. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Services Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments,

pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room CY-A257) at its headquarters, 445 12th Street, S.W., Washington, D.C.